

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

JOINT PETITION OF LITEL TELECOMMUNICATIONS)
CORPORATION AND CHARTER NETWORK COMPANY)
FOR A DECLARATION THAT NO APPROVAL IS)
REQUIRED IN CONNECTION WITH THE MERGER OF) CASE NO. 92-409
CHARTER NETWORK COMPANY INTO LITEL)
TELECOMMUNICATIONS CORPORATION OR IN THE)
ALTERNATIVE FOR APPROVAL OF MERGER OF)
CHARTER NETWORK COMPANY INTO LITEL)
TELECOMMUNICATIONS CORPORATION)

O R D E R

On September 22, 1992, LiTel Telecommunications Corporation ("LiTel") and Charter Network Company ("Charter") filed a joint petition for a Commission determination that no approval is required in connection with the proposed merger of Charter into LiTel or, alternatively, for approval of the proposed merger. The petition also requested approval of the proposed post-merger tariff.

LiTel and Charter are both telecommunications corporations authorized to provide intrastate interLATA service in Kentucky. They are wholly owned subsidiaries of LiTel Communications, Inc. ("LCI"), formerly known as LCI Communications, Inc.

The application states

[t]he proposed merger is for the purpose of eliminating the operational, administrative and regulatory redundancies inherent in having two commonly-owned operating utilities furnishing essentially the same service in the Commonwealth. . . . Following the proposed merger, the assets, facilities, and personnel involved in providing telecommunications

service on behalf of Charter will continue to be so employed. Other than the change of the name of the entity providing service, the merger will be 'transparent' to Charter's customers.¹

FINDINGS

KRS 278.020 has two subsections, (4) and (5), which require Commission approval prior to acquisitions or transfers of interests in utilities. KRS 278.020(6) provides several exceptions to the requirements of Commission approval of acquisitions found in KRS 278.020(5). Specifically, KRS 278.020(6)(b) states:

Subsection (5) of this section shall not apply to any acquisition of control of any . . . [u]tility by an acquirer who directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, such utility, including any entity created at the direction of such utility for purposes of corporate reorganization. . . .

Because LiTel and Charter are under the common control of LCI and the purpose of the proposed merger is merely to reorganize the corporate structure, KRS 278.020(5) does not apply to the transaction through operation of KRS 278.020(6)(b).

The Applicants assert that KRS 278.020(4) is also inapplicable to the proposed merger since both are now wholly owned by LCI and the surviving entity will also be wholly owned by LCI. "Accordingly, the proposed merger transaction will not result in the acquisition by LiTel, or the transfer by Charter, of the ownership of, or the control of, or the right to control of,

¹ Application, page 4.

Charter. Rather, ownership, control, and the right to control Charter will remain ultimately with LCI."²

The Commission finds that Charter is transferring all of its assets and liabilities to LiTel and that it is consequently transferring all control of its operations to LiTel, regardless of the fact that the sole shareholder of both companies is the same entity. Therefore, Commission approval of the transaction is required pursuant to KRS 278.020(4).

The Commission must grant its approval of the merger if LiTel has the financial, technical, and managerial abilities to provide reasonable service.

The Commission finds that LiTel possesses the financial, technical, and managerial abilities to provide reasonable service to the public and that the merger is for a proper purpose and consistent with the public interest. LiTel currently provides interLATA service in Kentucky and will provide substantially the same service after the merger. There will be no changes in services or in the management of the utility. The proposed merger, as described in the joint application, is consistent with the requirements of KRS 278.020(4) and should be approved.

IT IS THEREFORE ORDERED that:

1. The proposed merger shall be and hereby is approved.
2. LiTel shall give notice to the Commission within 30 days of the closing of the proposed merger.

² Application, pages 4-5.

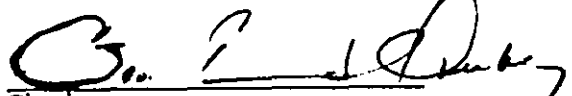
3. LiTel's proposed tariff setting rates and rules of service is hereby approved.

4. Within 30 days from the date of this Order, LiTel shall file its revised tariff sheets to include relevant parts of the existing Charter tariff in accordance with 807 KAR 5:011, Section 11.

5. In the event the merger does not take place, LiTel shall immediately notify the Commission in writing that it will not be acquiring the assets and obligations of Charter.

Done at Frankfort, Kentucky, this 19th day of October, 1992.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ATTEST:


Executive Director